

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EXPEDIA, INC.,

Plaintiff,

v.

RESERVATIONSYSTEM.COM, INC. d/b/a
BOOKIT.COM, INC., and LAURA VEGLIA
f/k/a LAURA WILDE,

Defendants.

CASE NO. C06-1580RSM

ORDER DENYING DEFENDANTS'
MOTION TO DISMISS OR TRANSFER

I. INTRODUCTION

This matter comes before the Court on defendants' motion to dismiss or, in the alternative, to transfer venue to the Southern District of Florida. (Dkt. #10). Defendant Bookit.com ("Bookit") argues that because it has not had the required contacts with this forum, the Court cannot exercise personal jurisdiction over it. Defendant Laura Veglia ("Veglia") argues that she also has insufficient contacts with the State of Washington and therefore this Court cannot exercise personal jurisdiction over her. She further argues that the Court should not enforce the forum selection clause in her contract with Expedia. In the alternative, defendants ask this Court to transfer this action to the Southern District of Florida on the basis that it would be more convenient and in the interest of justice.

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1 Plaintiff responds that there are sufficient minimum contacts with Washington for this Court
2 to exercise personal jurisdiction over both defendants. Plaintiff further responds that this case should
3 not be transferred to Florida because it is neither more convenient nor in the interest of justice, and
4 because the forum selection clause in defendant Veglia's contract with Expedia carries great weight
5 and should be enforced.

6 For the reasons set forth below, the Court agrees with plaintiff, and DENIES defendants'
7 motion to dismiss and their alternate request to transfer.

8 **II. DISCUSSION**

9 **A. Background**

10 Plaintiff has filed an action alleging breach of contract, tortious interference and
11 misappropriation of trade secrets, resulting from defendant Veglia leaving her employment with
12 plaintiff and starting new employment with defendant Bookit.

13 Bookit is a Florida Corporation engaged in the online marketing and sales of travel services.
14 It is a direct competitor to plaintiff. All but four of Bookit's employees are located in Florida, and
15 there are no employees located in Washington.

16 Veglia is a resident of Florida. She was formerly employed by plaintiff in its Ft. Lauderdale
17 office, where she worked for five years, and where she held the position of Director of Market
18 Management for the Americas region, which included Canada, the majority of the United States,
19 Mexico, Central America, South America and the Caribbean. In that position, Veglia was
20 responsible for assisting plaintiff in meeting its sales goals in the Caribbean, developing supplier
21 relationships, negotiating hotel contracts, promoting destinations and facilitating reservations
22 through plaintiff's website. Plaintiff alleges that through this position Veglia was privy to key
23 business and financial information, and other proprietary information such as plaintiff's software
24 program.

25 On or about October 26, 2006, defendant Veglia submitted her notice of resignation to
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1 plaintiff. She began her employment with Bookit as Vice President of Sales on October 30, 2006.
2 Initially, Veglia was placed in charge of Bookit's Caribbean region.¹ The instant lawsuit followed.

3 Plaintiff initially requested an emergency temporary restraining order and expedited
4 discovery. The Court denied those requests, finding that plaintiff had failed to demonstrate
5 immediate and irreparable injury and failed to provide reasons why notice to the adverse party should
6 not be required. The Court also found that the jurisdictional issues raised in the instant motion
7 should be reviewed prior to any discovery on the merits. Accordingly, the Court now turns to the
8 instant motion.

9 **B. Motion to Strike**

10 As a preliminary matter, the Court addresses plaintiff's request to strike all unsupported
11 statements related to the testimony of defendants' unidentified Caribbean witness, which is raised in
12 a footnote in its response brief. Plaintiff also appears to object to any supporting affidavits that are
13 filed with defendants' reply. The Court denies this request. First, the Court has the ability to
14 determine which facts are supported and unsupported and can afford the appropriate weight to those
15 facts. Second, this Court's local rules allow parties to file supporting information, such as affidavits,
16 with the reply brief. Local Rule CR 7(b)(3). Thus, the Court finds no reason to strike defendants'
17 affidavits simply because they are filed with the reply. In any event, for the reasons set forth below,
18 the Court will deny defendants' motion, and, therefore, there is no prejudice to plaintiff by denying
19 its motion to strike.

20 **C. Personal Jurisdiction**

21 *1. Standard of review*

22 Defendants move to dismiss for lack of personal jurisdiction pursuant to Fed. R. Civ. P

24 ¹ Bookit asserts that since this lawsuit was filed and it received a copy of Veglia's employment
25 contract with plaintiff, it has removed Veglia from her position with the Caribbean region and moved her
26 to a different region where she will not have contact with the clients or customers with whom she dealt
while working for plaintiff in the previous twelve months.

12(b)(2). In response to a motion to dismiss for lack of personal jurisdiction, it is the plaintiff who bears the burden of demonstrating that jurisdiction over a defendant is appropriate. *Dole Food Co. v. Watts*, 303 F.3d 1104, 1108 (9th Cir. 2002). Where, as here, the motion to dismiss is based on written materials rather than an evidentiary hearing, the plaintiff need only make a *prima facie* showing of jurisdictional facts to avoid dismissal. *Id.* While a plaintiff may not simply rely on the bare allegations of its Complaint, uncontroverted allegations in the Complaint are taken as true. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). Conflicts between the facts contained in the parties' affidavits must be resolved in the plaintiff's favor. *Id.*; *Dole*, 303 F.3d at 1108.

Washington State's long-arm statute, RCW 4.28.185 governs the question of personal jurisdiction. The Ninth Circuit Court of Appeals has explained that the statute is coextensive with the outer limits of federal due process. *Chan v. Society Expeditions, Inc.*, 39 F.3d 1398, 1405 (9th Cir. 1994); *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain, Co.*, 284 F.3d 1114, 1126 (9th Cir. 2002). Thus, this Court need only determine whether jurisdiction in this District comports with due process.

Due process requires that a non-resident defendant have certain minimum contacts with the forum state so that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Personal jurisdiction can be specific or general. *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 n. 8-9 (1984). Specific jurisdiction arises where a cause of action results from a defendant's contacts with the forum state. *Id.* at 414 n.8. General jurisdiction arises where a cause of action is unrelated to a defendant's contacts with the forum state, but because the defendant has had pervasive, continued and systematic contacts with the forum state, there is justification to exercise jurisdiction over any action of the defendant within the forum state. *Id.* at 414 n.9.

On this motion, defendants argue that this Court may not exercise either general or specific

1 jurisdiction over defendants. The Court addresses each of these arguments in turn.

2 *2. Defendant Bookit*

3 The Court may exercise general personal jurisdiction over a defendant when it has engaged in
4 substantial or continuous and systematic business activities in the forum state. *Bancroft & Masters,*
5 *Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). Plaintiff alleges in its Complaint
6 that Bookit directly facilitates, via its website, travel reservations, including hotel accommodations,
7 car rentals, and flight options in and to Seattle, Washington, and generally conducts business in the
8 State of Washington, and argues that this allegation is sufficient to establish a *prima facie* case of
9 general jurisdiction. Plaintiff further argues that, when looking at the “economic reality” of
10 defendants activities in Washington, it is clear that general jurisdiction exists.

11 Bookit first focuses its response on its internet presence in Washington. Bookit analogizes
12 its website to an internet advertisement, and argues that an internet advertisement alone is not
13 enough to convey general jurisdiction over a company. The Court is not persuaded by this
14 argument. Bookit does more than just advertise in Washington. Indeed, through its website, Bookit
15 offers Washington residents the opportunity to purchase airfare, hotels and vacation packages seven
16 days a week, 24 hours a day. (*See* Dkt. #18, Ex. 2). While only a small portion of Bookit’s revenue
17 and reservations may actually come from Washington, that doesn’t change the fact that Bookit’s
18 sales through its website are intentional and entirely within Bookit’s control, and sales do actually
19 occur in this state.² Moreover, Bookit has implicitly acknowledged that some of its direct business
20 contacts are located in Washington State. (Dkt. #10 at 6).

21 The Ninth Circuit Court of Appeals has explained that “the likelihood that personal
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23 ² Bookit notes that the total bookings from guests living in Washington is less than one percent of
24 Bookit’s total bookings, physical hotel bookings located in Washington constitute less than one-tenth of
25 one percent of Bookit.com’s hotel bookings, flights reserved through Bookit by people in Washington
26 constitute less than one-tenth of one percent of total flights booked on Bookit, and cars rented in
Washington through Bookit constitute less than one-tenth of one percent of cars booked through Bookit.
(Dkt. #21 at 2-3).

1 jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of
2 commercial activity that an entity conducts over the Internet.” *Cybersell, Inc. v. Cybersell, Inc.*, 130
3 F.3d 414, 419 (9th Cir. 1997) (citing *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119,
4 1124 (W.D. Pa. 1997)). Here, while it is admittedly a close question, the Court finds that exercising
5 personal jurisdiction is constitutional and appropriate in light of these facts. Because the Court finds
6 that general jurisdiction exists, it is not necessary to determine whether it can also exercise specific
7 jurisdiction.

8 3. Defendant Veglia

9 Plaintiff argues that this Court may exercise jurisdiction over Veglia based on her prior
10 written consent to this jurisdiction through her employment contract with plaintiff. Defendants
11 acknowledge the forum selection clause, but assert in conclusory fashion that Veglia has worked in
12 Florida for five years, plaintiff has offices in Florida, all of the relevant witnesses are there, and there
13 is a complete absence of any relationship between Washington and this action. Therefore,
14 defendants argue that the Court should refuse to enforce the forum selection clause as unreasonable.
15 Again, the Court is not persuaded.

16 In the Ninth Circuit, it is well-settled that the Supreme Court’s decision in *The Bremen v.*
17 *Zapata Off-Shore Co.*, 407 U.S. 1 (1972), controls the question of whether a forum selection clause
18 is enforceable. *See Argueta v. Banco Mexicano, S.A.*, 87 F.3d 320, 324-25 (9th Cir. 1996) (noting
19 that the standard set forth in *Bremen* “has been widely applied to forum selection clauses in general”
20 and is not limited to the admiralty context). Under *Bremen*, a choice-of-forum clause will be given
21 full effect by the Court unless it would be unreasonable or unjust to do so. Forum-selection clauses
22 “are prima facie valid and should be enforced unless enforcement is shown by the resisting party to
23 be ‘unreasonable’ under the circumstances.” *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10
24 (1972) (citation omitted). A forum selection clause is unreasonable if:

- 25 (1) its incorporation into the contract was the result of fraud, undue influence, or
26 overweening bargaining power; (2) the selected forum is so gravely difficult and

inconvenient that the complaining party will for all practical purposes be deprived of its day in court; or (3) enforcement of the clause would contravene a strong public policy of the forum in which the suit is brought.

Argueta, 87 F.3d at 325 (internal quotation marks and citations omitted). Defendants demonstrate none of these elements. Accordingly, the Court finds the forum selection clause enforceable and finds that it may exercise personal jurisdiction over Veglia.

D. Transfer Pursuant to 28 U.S.C. § 1404(a)

Defendants next argue that even if this Court finds that personal jurisdiction exists, the Court should transfer the action to the Southern District of Florida for the convenience of the parties and in the interest of justice. 28 U.S.C. § 1404(a). On such a motion, the moving party bears the burden of showing that jurisdiction and proper venue would exist in the district to which a transfer is requested. *Commodity Futures Trading Comm'n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979). The district court has broad discretion to consider case-specific circumstances. *Deputy v. Long-Term Disability Plan of Sponsor Aventis Pharms.*, 2002 U.S. Dist. LEXIS 22583, at *5 (N.D. Cal. Nov. 21, 2002) (Henderson, J.).

When determining whether a transfer is proper, this Court employs a two-step analysis. First, the Court considers the threshold question of whether the case might have been brought in the forum to which the transfer is sought. *See Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 414 (9th Cir. 1985). If the Court concludes that venue is proper in the transferee court, it then balances the plaintiff's interest to freely choose a litigation forum against considerations of convenience of defendant and witnesses and the interest of justice. *See id.* The Court may consider:

(1) the location where the relevant agreements were negotiated and executed, (2) the state that is most familiar with the governing law, (3) the plaintiff's choice of forum, (4) the respective parties' contacts with the forum, (5) the contacts relating to the plaintiff's cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses, and (8) the ease of access to sources of proof. Additionally, the presence of a forum selection clause is a 'significant factor' in the court's § 1404(a) analysis. We also conclude that the relevant public policy of the forum state, if any, is at least as significant a factor in the § 1404(a) balancing.

1 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-499 (9th Cir. 2000).

2 Neither party disputes that this case could have been brought in the Southern District of
3 Florida. Thus, the Court turns to the question of whether that venue is more convenient and in the
4 interest of justice.

5 Here, the plaintiff's choice of forum is Washington, and Washington is a forum which this
6 Court has already determined has personal jurisdiction over both defendants. This factor is afforded
7 substantial weight. *Williams v. Bowman*, 157 F. Supp.2d 1103, 1106 (N.D. Cal. 2001). Indeed, the
8 Ninth Circuit Court of Appeals has explained that, because there is a strong presumption in favor of
9 plaintiff's choice of forum, the moving party has the burden of showing that the balance of
10 convenience weighs heavily in favor of the transfer. *Decker Coal Co. v. Commonwealth Edison Co.*,
11 805 F.2d 834, 843 (9th Cir. 1986). For the reasons stated below, defendants cannot make that
12 showing.

13 First, it appears that Washington law will control the issues in this case, and this Court is
14 extremely familiar with the law of that state. This factor weighs in favor of plaintiff. While
15 defendants correctly note that the employment agreements at issue were negotiated in Florida and
16 executed in Florida, and the Court agrees that this factor would weigh in favor of defendants'
17 request to transfer, defendants fail to demonstrate that Washington law would not govern the
18 agreements, especially in light of the choice of law clause contained in the contracts.

19 Similarly, the Court finds that defendants have not demonstrated that Florida is a more
20 convenient forum. It is true that defendants may have some witnesses that are located in Florida or
21 the Caribbean that will testify in this case. The Court acknowledges that for witnesses residing in the
22 Caribbean it may be more convenient to travel to Florida, and this Court does not have the power to
23 compel their testimony in this Court. However, the same is true of plaintiff's witnesses. Plaintiff has
24 identified several potential witnesses in this state that would be inconvenienced by traveling to
25 Florida, and the Florida court also lacks the power to compel the testimony of those witnesses in that
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1 court. Thus, this factor does not weigh in favor of either party.

2 Nor have defendants demonstrated that it is easier to access the proof necessary to defend
3 their claims in Florida, or that the cost of litigating in Florida will be any less than the cost of
4 litigation here. Again, just as defendants demonstrate that key testimony and other proof of
5 defendants' actions are located in Florida, plaintiff also demonstrates that key testimony and other
6 proof of its claims are located in Washington. Thus, this factor does not weigh in favor of either
7 party.

8 Finally, the Court notes that the forum selection clause is controlling in this case, at least with
9 respect to defendant Veglia. That clause dictates litigation in this Court. Defendants have pointed
10 to no public policy in the state of Washington against the enforcement of forum selection clauses,
11 and this Court has found none. Accordingly, and for all of the reasons stated above, this Court finds
12 that defendants have failed to make a strong showing of inconvenience in this forum. Therefore, the
13 Court declines to transfer this action to the Southern District of Florida.

14 III. CONCLUSION

15 Having reviewed defendants' motion, plaintiff's opposition, defendants' reply, plaintiff's sur-
16 reply, the declarations and evidence in support of those briefs, and the remainder of the record, the
17 Court hereby ORDERS:

18 (1) Defendants' Motion to Dismiss or Transfer (Dkt. #10) is DENIED in its entirety.

19 (2) The Clerk shall forward a copy of this Order to all counsel of record.

20 DATED this 14th day of December, 2006.

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22 RICARDO S. MARTINEZ
23 UNITED STATES DISTRICT JUDGE
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